



# Department of Justice

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## **ROCHESTER GAS & ELECTRIC AGREES TO SETTLE ANTITRUST SUIT**

WASHINGTON, D.C.-- The Department of Justice has reached an agreement with Rochester Gas & Electric Company (RG&E) that will allow the University of Rochester to produce and sell low cost electricity in competition with RG&E.

The settlement, filed on February 20, 1998 in U.S. District Court in Rochester, resolves a Justice Department complaint challenging an earlier agreement RG&E had reached with the University that prevented the University from replacing its aging, coal-burning, steam plant with a new, efficient power plant. In addition to invalidating RG&E's agreement with the University, the settlement prohibits RG&E from entering into similar agreements with other competitors, including companies with the potential to compete with RG&E in producing electricity sometime in the future.

Joel I. Klein, Assistant Attorney General in charge of the Antitrust Division, said, "The settlement is good for consumers and businesses in Rochester. It ensures that RG&E will not, now or in the future, deprive them of the benefits of price competition in the retail sale of electricity. This settlement also sends a clear message to electric utilities throughout the country that their conduct must conform to the antitrust laws."

The settlement followed shortly after a federal judge in Rochester rejected RG&E's claim that its conduct was exempt from the antitrust laws under the "state action doctrine." This doctrine protects private companies from antitrust liability when their conduct is specifically

authorized and closely supervised by the state. On February 17, the Court denied RG&E's motion for summary judgment, holding that "the New York Public Service Law does not permit a utility to offer discounts to a potential competitor in return for that competitor's promise not to compete."

The Department's complaint, filed on June 24, 1997, in U.S. District Court in Rochester, alleged that RG&E encouraged the University to enter the anticompetitive agreement by threatening to cut off certain research grants, promising to pay hundreds of thousands of dollars for conservation programs even if the University did not undertake them, and offering an exceptionally low electricity rate. At the time, the University's trustees had voted to build a "cogeneration" plant, which would have produced electricity as a byproduct of producing steam for heating and cooling campus buildings at a negligible additional cost. The complaint alleged that the new plant would have produced inexpensive, surplus electricity that under New York law the University could have sold in competition with RG&E.

As required by the Antitrust Procedures and Penalties Act, the proposed settlement, along with the Department's Competitive Impact Statement, will be published in the Federal Register. Any person may submit comments on the proposed decree within sixty days to Roger Fones, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 7th Street, N.W., Suite 500, Washington, D.C. 20303-0001. At the conclusion of

the comment period, the Court may enter the final judgment upon finding, following review of the comments received, that it serves the public interest.

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